

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-10 are pending; no claims are newly added, amended, or canceled herewith.

In the outstanding Office Action, Claim 1 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over Claims 1 and 2 of co-pending application no. 09/935,584. Claims 2-10 were indicated as allowable.

Applicant acknowledges with appreciation the indication that Claims 2-10 are allowable. Although the outstanding rejection of Claim 1 is respectfully traversed, Applicant has filed herewith a Terminal Disclaimer against application serial no. 09/935,584. Accordingly, it is respectfully requested that the rejection of Claim 1 be withdrawn.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870 (Fed. Cir. 1991). Accordingly, Applicant's filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

Additionally, Applicants respectfully request that the Information Disclosure Statement filed March 22, 2002 be acknowledged. A copy of the papers as filed, including the date-stamped filing receipt, is enclosed herewith for the Examiner's consideration.

Consequently, in view of the foregoing discussion, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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